

FLYNN
Appl. No. 10/715,368
June 18, 2007

REMARKS/ARGUMENTS

Claims 1-11 stand rejected in the outstanding Official Action. Claims 1, 6 and 11 have been amended and therefore claims 1-11 remain in this application.

Claims 1-11 stand rejected under 35 USC §103 as unpatentable over Cooper (U.S. Patent 6,823,516) in view of Kobayashi (U.S. Patent 6,148,415). In his rejection of the independent claims, the Examiner contends that all claimed structures are disclosed in Cooper, with the exception that the Examiner admits "Cooper fails to disclose the at least one further circuit supports data processing at at least one intermediate data processing performance level." (Official Action, page 3, lines 10-11, page 5, lines 9-11 and page 7, lines 9-11).

While the Examiner's admission is very much appreciated, the Examiner's quote fails to recite at least a portion of Applicant's claim with respect to said "at least one further circuit." That portion of the claim which is omitted is the requirement that the temporary operation at at least one intermediate data processing performance level occurs "during said change," (emphasis added) i.e., the previously recited "change in performance control signal corresponding to a change from a first desired data processing performance level to a second desired data processing performance level."

Each of Applicant's independent claims 1, 6 and 11 specify that the operation at the intermediate data processing performance level occurs "during said change" (see the last line of claims 1, 6 and 11). The Examiner does not address the failure of the Cooper reference to disclose this claimed limitation and also fails to indicate that the secondary reference to Kobayashi operates at any intermediate data processing performance level "during said change."

FLYNN

Appl. No. 10/715,368

June 18, 2007

Moreover, the Examiner may not appreciate that Kobayashi, as discussed in the Abstract and elsewhere, is directed to "one or more combinations of an operating data processing machine and a backup data processing machine" which are "connected together to enable backup switching wherein the backup machine takes over the data processing from the operating machine when a failure occurs in the operating machine." (Kobayashi Abstract).

The Examiner fails to identify any teaching in the Kobayashi reference which suggests that the operating data processing machine is operated at an "intermediate data processing performance level" (emphasis added). Instead, because it has a parallel backup data processing system, Kobayashi merely switches to the backup system which may operate at the same data processing performance level as the primary operating system.

Each of Applicant's independent claims 1, 6 and 11 specify that "said processor temporarily operates at said at least one intermediate data processing performance level during said change." Thus, it is not the backup processor which operates during change, but the primary data processing system which is the only system identified in the claim.

Accordingly, not only does Kobayashi fail to teach Applicant's claimed subject matter, i.e., operation of the primary data processing system at at least one intermediate performance level, he specifically teaches away from that and indeed suggests that a backup data processing system is needed. There is no indication in Kobayashi that the backup data processing system operates at any different data processing performance level than does the primary system. They are simply primary and backup systems with switching therebetween if there is a difficulty encountered with the primary machine. Should the Examiner believe that there is any teaching in Kobayashi of the operation of the primary data processor at an

FLYNN

Appl. No. 10/715,368

June 18, 2007

intermediate performance level "during said change," he is specifically requested to identify where this occurs in Kobayashi. Otherwise, Kobayashi not only fails to disclose the claimed subject matter (which is admitted by the Examiner to be missing from the Cooper reference), he specifically teaches away from Applicant's claimed system.

Thus, the language of claims 1, 6 and 11 in the Amendment under Rule 116 filed on December 18, 2006 (and entered by Examiner Brown) is simply missing from Applicant's claims, even if Cooper and Kobayashi were combined. However, inasmuch as the Examiner may not appreciate that the claimed "at least one further circuit" supports data processing of the processor, i.e., "a processor" noted in line 2 of claim 1, Applicant has amended the independent claims 1, 6 and 11 to positively recite that "said at least one further circuit supports data processing of said processor at at least one intermediate data processing performance level." This clearly distinguishes Applicant's independent claims from not only the Cooper reference, but also the Kobayashi reference which suggests the desirability of a second backup processor which may or may not operate at the claimed at least one intermediate performance level, whether or not "during said change."

In view of the above, even if Cooper and Kobayashi were combined, there is no disclosure of Applicant's claimed subject matter, i.e., "at least one further circuit supports data processing of said processing at at least one intermediate data processing performance level" or the requirement that "said processor temporarily operates at said at least one intermediate data processing performance level during said change." Neither of these two claimed interrelationships are suggested by either of the cited Cooper and Kobayashi references. Therefore, even if these references are combined, there is no disclosure of Applicant's

FLYNN

Appl. No. 10/715,368

June 18, 2007

independent claims 1, 6 and 11 or the remaining claims dependent thereon. Should the Examiner believe otherwise, he is respectfully requested to identify the specific teaching (by paragraph and line number) in either Cooper or Kobayashi which suggests either of the features discussed above with respect to the independent claims 1, 6 and 11.

On page 8 of the Official Action, the Examiner responds to the previously submitted arguments by agreeing that Cooper fails to anticipate the subject matter of claims 1-11, apparently resulting in the admissions with respect to independent claims 1, 6 and 11 noted above. Inasmuch as the above arguments establish that two features claimed in Applicant's independent claims are missing from both the Cooper and Kobayashi references, there is no basis for the new rejection of claims 1-11 under 35 USC §103 over the Cooper/Kobayashi combination and therefore any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-11 as amended are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

FLYNN

Appl. No. 10/715,368

June 18, 2007

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Stanley C. Spooner
Reg. No. 27,393

SCS:kmm

901 North Glebe Road, 11th Floor

Arlington, VA 22203-1808

Telephone: (703) 816-4000

Facsimile: (703) 816-4100